



UNITED STATES DEPARTMENT OF COMMERCE  
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/520,947	03/08/00	FORMO	N FPMI114707

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IM52/1003

EXAMINER
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MADSEN, R

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 10/03/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.

09/520,947

Applicant(s)

FORMO, NORMAN PAUL

Examiner

Robert Madsen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 July 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 16-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

Applicant's election of claims 1-15 in Paper No. 5 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1 is rejected under 35 U.S.C. 102(a) as being anticipated by Theed (GB 2331059 A).

Theed teaches feeding a loaf of bread into a preformed bag with an opened first end and closed second end, sealing and heat shrinking the bag, and inserting the bag into an outer bag (Page 2, Paragraph 3, Page 4, Paragraphs 2 and 3, Pages 11-12).

Claims 10 is rejected under 35 U.S.C. 102(a) as being anticipated by Theed (GB 2331059 A).

Theed teaches a loaf of bread enclosed in an inner heat shrunk bag having a preformed closed end wherein the opposite end is gathered and sealed, and this heat

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shrunk bread containing bag is contained within an outer bag with a closed end and an openable end (Page 2, Paragraph 3, Page 4, Paragraphs 2 and 3, Pages 11-12).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 2, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theed (GB 2331059 A) as applied to claim 1 above, further in view of Williams (AU 9642135 A) and McEachen (AU 9344229A).

Theed teaches inserting the bread through the first end of the bag, heat shrinking the bag, heat sealing the first end, and placing the bag into an outer bag (Page 2, Paragraph 3, Page 4, Paragraphs 2 and 3, Pages 11-12), but is silent in teaching the second end of the heat shrunk bag is inserted last as recited in claim 2, that the process is completed automatically using a first and second bagging machine, as recited in claim 8, and that the heat shrunk bag is turned between the two machines as recited in claim 9.

Williams is relied on as evidence of the conventionality of packaging a loaf of bread in an inner bag wherein the inner bag's non-mouthed end, or second end, is placed in the outer bag last (i.e. "the inner bag is openable at its non-mouthed end to

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allow access when access is allowed by the corresponding end of the outer bag").

Williams teaches the open mouthed end is heat-sealed closed (Abstract).

McEachen is also relied on as further evidence of a bread bag having a closed end and open end wherein the open end receives the bread and either end may be opened to access the bread(Abstract).

Therefore, it would have been obvious to insert the bag of Theed such that the second end of the heat shrunk bag is inserted last into the outer wrap as recited in claim 2 since it was well known in the art that in methods of sealing loaf of bread in a bag the closed end of the bag (second end) is used as the end to access the loaf once the open end has been heat sealed. One would have been substituting one method of inserting an inner bag for another for the same purpose: packaging a loaf of bread in a double bag system. It would have been further obvious to perform this method automatically using a first and second bagging machine as recited in claim 8, wherein the inner bag is turned between the first and second machine as recited in claim 9, since it has been held that broadly providing an automatic or mechanical means to replace a manual activity which accomplished the same result is not sufficient to distinguish over the prior art (In re Venner, 262 F.2d 91, 95, 120 USPQ 193, 194 (CCPA 1958)).

Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theed (GB 2331059 A) in view of Williams (AU 9642135 A) and McEachen (AU 9344229A) as applied to claim 2 above, further in view of Morris (US 3428240).

Regarding claims 3-5, Theed teaches inserting the inner heat shrunk bag of bread into an outer bag wherein the inner bag originally has a first open end for filling the bag and a second closed end, but is silent in teaching the second end has bag weakening opening means. However, it is well known in the art to provide a second end with a weakening opening means for a bag in which a loaf of bread is inserted.

McEachen is relied on as evidence of the conventionality of filling a bag with bread, sealing the first end and providing a line of weakening comprising perforations, as recited in claims 3 and 4, at the second end of the bag to access the bread (Abstract).

Morris is relied on as evidence of the conventionality of providing access to wrapped loaf of bread in an outer bag with a peripheral line of weakness as recited in claim 3, which comprises a horizontal line of perforations as recited in claims 4 and 5 at the end of the inner wrap closest to the opening of the outer bag (Figure 3, Abstract).

Therefore it would have been obvious to include a line of weakness or a horizontal row of perforations to the second end of the inner bag of Theed since one would have been substituting one means for accessing bread in a sealed bag for another.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theed (GB 2331059 A) in view of Williams (AU 9642135 A) and McEachen (AU 9344229A) further in view of Morris (US 3428240), as applied to claim 3-5 above, further in view of Blum (US 2132144).

Theed teaches inserting the inner heat shrunk bag of bread into an outer bag wherein the inner bag originally has a first open end for filling the bag and a second closed end, but is silent in teaching the second end has a line of scoring to open the inner bag. As discussed above in the rejection of claims 3-5, it was well known to provide a horizontal line of weakness for a bag in which a loaf of bread is inserted.

Blum is relied on as evidence of the conventionality of using either a score line or perforations as a line of weakness to gain access to a wrapped loaf of bread (Figure 1, Column1, lines 1-44).

Therefore, it would have been obvious score the line of weakness since it was known to use a line of weakness for access wrapped loaves of bread and one would have been substituting one line of weakness for another for the same purpose: access a wrapped loaf of bread.

Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Theed (GB 2331059 A) as applied to claim 10 above, further in view of McEachen (AU 9344229A) and Morris (US 3428240).

Theed teaches bread is inserted through the first end of the bag, heat shrinking the bag, heat sealing the first end, and placing the bag into an outer bag (Page 2, Paragraph 3, Page 4, Paragraphs 2 and 3, Pages 11-12). Although Theed is silent in teaching that the closed end of the inner bag is gusseted, gusseted bread bags are well known in the art.

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McEachen is relied on as evidence of feed bread into a bag having a closed end that is gusseted (Abstract).

Morris is relied on as further evidence of the conventionality of providing a gusset end in an inner wrap, surrounding a loaf of bread, that is contained within an outer wrap (See Figure 3, Abstract).

Therefore, it would have been obvious to include a gusseted end at the closed end of the inner bag since it was well known in the art to provide gusseted ends in an inner wrap in an outer bag wherein the inner wrap surround a loaf of bread and it was well known to inset loaves of bread into preformed bags comprising a gusseted second end. One would have been substituting one type of closed end for another for the same purpose: enclose a loaf of bread.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Theed (GB 2331059 A) as applied to claim 10 above, further in view of Williams (AU 9642135 A) and McEachen (AU 9344229A).

Regarding claim 12, Theed teaches bread is inserted through the first end of the bag, heat shrinking the bag, heat sealing the first end, and placing the bag into an outer bag (Page 2, Paragraph 3, Page 4, Paragraphs 2 and 3, Pages 11-12), but is silent in teaching the second end of the heat shrunk bag is at the openable end of the outer bag

Williams is relied on as evidence of the conventionality of packaging a loaf of bread in an inner bag wherein the inner bag's non-mouthed end, or second end, is placed in the outer bag last (i.e. "the inner bag is openable at it's non-mouthed end to



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allow access when access is allowed by the corresponding end of the outer bag").

Williams teaches the open mouthed end is heat-sealed closed ( Abstract).

McEachen is also relied on as further evidence of a bread bag having a closed end and open end wherein the open end receives the bread and either end may be opened to access the bread(Abstract).

Therefore, it would have been obvious to insert the bag of Theed such that the second end of the heat shrunk bag is inserted last into the outer wrap since it was well known in the art that in methods of sealing loaf of bread in a bag the closed end of the bag (second end) is used as the end to access the loaf once the open end has been heat sealed. One would have been substituting one method of inserting an inner bag for another for the same purpose: packaging a loaf of bread in a double bag system.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Theed (GB 2331059 A) in view of Williams (AU 9642135 A) and McEachen (AU 9344229A) as applied to claim 12 above, further in view of Morris (US 3428240).

Regarding claims 13 and 14, Theed teaches inserting the inner heat shrunk bag of bread into an outer bag wherein the inner bag originally has a first open end for filling the bag and a second closed end, but is silent in teaching the second end has bag weakening opening means. However , it is well known in the art to provide a second end with a weakening opening means for a bag in which a loaf of bread is inserted.

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McEachen is relied on as evidence of the conventionality of filling a bag with bread, sealing the first end and providing a line of weakening comprising perforations, as recited in claim 13, at the second end of the bag to access the bread (Abstract).

Morris is relied on as evidence of the conventionality of providing access to wrapped loaf of bread in an outer bag with a peripheral line of weakness as recited in claim 13, which comprises a horizontal line of perforations as recited in claim 14 at the end of the inner wrap closest to the opening of the outer bag (Figure 3, Abstract).

Therefore it would have been obvious to include a line of weakness or a horizontal row of perforations to the second end of the inner bag of Theed since one would have been substituting one means for accessing bread in a sealed bag for another.

Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Theed (GB 2331059 A) in view of Williams (AU 9642135 A) and McEachen (AU 9344229A) further in view of Morris (US 3428240), as applied to claim 13 and 14 above, further in view of Blum (US 2132144).

Theed teaches inserting the inner heat shrunk bag of bread into an outer bag wherein the inner bag originally has a first open end for filling the bag and a second closed end, but is silent in teaching the second end has a line of scoring to open the inner bag. As discussed above in the rejection of claims 13 and 14, it was well known to provide a horizontal line of weakness comprising perforation for a bag in which a loaf of bread is inserted.

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Blum is relied on as evidence of the conventionality of using either a score line or perforations as a line of weakness to gain access to a wrapped loaf of bread (Figure 1, Column1, lines 1-44).

Therefore, it would have been obvious score the line of weakness since it was known to use a line of weakness, including scoring, for access wrapped loaves of bread and one would have been substituting one line of weakness for another for the same purpose: access a wrapped loaf of bread.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fairweather et al. (GB 2350103) teach a bread bag with perforations at a gusseted end. American National Can (GB 1152281) and Young (US 3914917) teach heat-shrinking bread. Smith (US 3092502) and Austin et al. (US 3132028) teach two layer bread bags. Collins et al. (US 5741075) teach horizontal perforations to access wrapped bread.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (703)305-0068. The examiner can normally be reached on 6:30AM-4:00PM M-F (except alternate Fridays).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (703)308-3959. The fax phone numbers

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for the organization where this application or proceeding is assigned are (703)305-3599 for regular communications and (703)305-3599 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0061.

Robert Madsen   
Examiner  
Art Unit 1761  
September 28, 2001

  
STEVEN WEINSTEIN  
PRIMARY EXAMINER  
ART UNIT 132 1761  
FOR M. CANO